Supreme Court, U.S.
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No. 05-15

IN THE

Supreme Court of the United States

ALBERT C. HANNA,
Petitioner,

v.

THE CITY OF CHICAGO, a Municipal Corporation,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Four questions are presented:

1. A defendant sued under 42 U.S.C. 1983 is entitled to remove such a case to the federal courts as a matter of right, under 28 U.S.C. 1441(b). Under Illinois law, as interpreted by the United States Court of Appeals for the Seventh Circuit, it is *de facto* impossible for a zoning plaintiff to maintain a claim under 42 U.S.C. 1983 in federal court. The rule of law in the Seventh Circuit is that zoning plaintiffs must exhaust their state court remedies before proceeding in federal court. The operation of these laws means that a prevailing plaintiff can never be awarded attorney's fees under 42 U.S.C. 1988, because she can never maintain her claim under 42 U.S.C. 1983 after prevailing in state court. Does this scenario deprive prevailing zoning plaintiffs in Illinois of rights, privileges and protections secured by the Fifth and Fourteenth Amendments to the United States Constitution, and enforceable under § 1983?
2. By not allowing a prevailing civil rights plaintiff to recover attorney's fees under 42 U.S.C. 1988 for work done in state court on state civil rights claims, does Illinois law violate the maxim that state due process protection cannot be less than federal due process protection?
3. Does Illinois law violate the strong public policy rationale behind the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988?
4. Do the Illinois decisions below frustrate policies of judicial comity by preventing a state court from awarding attorney's fees incurred in redressing civil rights violations for which § 1983 provides a remedy, when the federal courts can make such an award?

PARTIES TO THE PROCEEDING

The parties below are identified in the caption.

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OPINIONS BELOW

The March 30, 2005 letter from the Illinois Supreme Court denying Petitioner's Petition for Leave to Appeal is unreported. App. A. The March 7, 2005 Modified Order Upon Denial of Petition for Rehearing of the Appellate Court of Illinois, First Judicial District, affirming the opinions of the Circuit Court of Cook County, Illinois, is unreported. App. B. The July 18, 2001 Memorandum Opinion of the Circuit Court of Cook County, Illinois, Chancery Division, denying Petitioner's Corrected Petition for Attorney's Fees under § 1988 is unreported. App. C. The April 4, 2001 Memorandum Opinion and Order of the Circuit Court of Cook County, Illinois, Chancery Division, finding the downzoning of Petitioner's property to violate the substantive due process clause of the Illinois Constitution is unreported. App. D.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1257.

On March 30, 2005, The Illinois Supreme Court denied Petitioner's Petition for Leave to Appeal the March 7, 2005 Modified Order Upon Denial of Petition for Rehearing, of the Appellate Court of Illinois, First Judicial District. That modified order affirmed the Circuit Court of Cook County, Illinois' denial of Petitioner's Amended Petition for Attorney's Fees, brought under 42 U.S.C. 1988. The validity of Illinois' Constitution and laws prohibiting the award of attorney's fees to prevailing civil rights plaintiffs is drawn into question as repugnant to (a) the United States Constitution, Amendments Five and Fourteen, (b) the Civil Rights Act of 1964, 42 U.S.C. 1983, and (c) the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. 1988.

Jurisdiction is also invoked under Rules 10(b) and (c) of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42 United States Code, Section 1983

Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42 United States Code, Section 1988

Proceedings in Vindication of Civil Rights

The provisions of 42 U.S.C. 1988 are lengthy, and are set out in App. E.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Amendment XIV

The provisions of the Fourteenth Amendment to the United States Constitution are lengthy, and are set out in App. F.

STATEMENT OF THE CASE

A. Summary of the Underlying Case.

This case involves a prevailing civil rights plaintiff who was procedurally barred from asserting and vindicating his federal due process rights under 42 U.S.C. 1983, and thus, although victorious in state court on his state due process claims, was unable to recoup attorney's fees under 42 U.S.C. 1988—a federal protection and privilege not expressly provided for under Illinois law.

The Petitioner, Albert C. Hanna, a 74 year old private citizen and not a developer, was adjudicated the victim of an unconstitutional "downzoning" (put simply, a change in zoning from a less restrictive to a more restrictive zoning classification) of his property. At trial, Hanna pled and proved under the Illinois Constitution that the downzoning not only reduced the value and future development potential of his property, but also (a) harmed the public welfare by excluding minorities, renters, seniors and other vulnerable groups of moderate means from living in the downzoned area, and (b) was arbitrary, unreasonable and capricious because the City failed to engage in any proper planning in enacting the downzoning. The trial court, affirmed by the Illinois Appellate Court, ruled that the downzoning was neither rationally related (the federal constitutional standard) nor